

4.10.2007. Present: Mr.K.D. Sood, counsel for the appellant.
Mr.Ashwani K.Sharma, counsel for respondents No.1 to 5.

The petitioner filed writ petition No.107 of 2005 in this Court claiming the following, amongst other reliefs:

"i) direct the respondents No.1 and 2 to consider the promotion of the petitioner to the cadre of Administrative Officer with consequential benefits from the date the petitioner became due for promotion from the year 2000 onwards;"

The writ petition was admitted on 13.4.2005. Thereafter, when the matter came up for hearing on 1.5.2007, the learned Single Judge passed the following order:

"This petition was admitted on 13th April, 2005. Mr.Kapil Dev Sood submits that as per Recruitment and Promotion Rules relevant for the post of Administrative Officer, his client is fully eligible and qualified, but the respondents have not constituted the DPC for considering the petitioner for promotion. This petition is pending since 2nd January, 2005. It will be in the interest of justice if Mr.Ashwani K.Sharma seeks instructions whether the petitioner can be considered for the post of Administrative Officer. If so, how soon and if not, why. The needful to be done within a period of seven days. Put up on 10th May, 2007."

Thereafter, on 10th May, 2007, the matter again came up for hearing before the learned Single Judge when the learned counsel for the petitioner placed on record a communication, dated 18.5.2006, whereby the petitioner has been promoted to the post of Administrative Officer. The Court thereafter recorded that in view of this, the writ petition has become infructuous. The entire order dated 10.5.2007 reads as follows:

"Mr.K.D. Sood, Advocate appearing on behalf of the petitioner has placed on record the copy of communication date 18.5.2006 whereby the promotion of the petitioner to the post of Administrative Officer has been made. In view of this the writ petition has become infructuous and the same is dismissed having become infructuous.

Needless to add that the petitioner will also be held entitled to all consequential benefits flowing from after issuance of letter dated 18.5.2006.

There shall be no order as to costs."

A bare perusal of both the orders, dated 1.5.2007 and 10.5.2007, does not, in any manner, reveal that the petitioner had not pressed his claim for being promoted to the cadre of Administrative Officer with consequential benefits from the year 2000. We are not expressing any opinion on the issue whether the petitioner was entitled to this relief or not. However, it is apparent that nothing is stated in either of the two orders that the petitioner had not pressed his claim for being considered from the year 2000. Therefore, in our considered view, the mere fact that the petitioner was promoted in the year 2006 did not mean that the writ petition had become infructuous. The learned Single Judge should have decided the issue as to whether the petitioner was entitled to the relief claimed or not.

We accordingly allow the appeal and set aside the order, dated 10.5.2007, passed by the learned Single Judge holding that writ petition No.107 of 2005 had become infructuous and remand the matter back to the learned Single Judge, who shall hear and decide the writ petition on merits.

(Deepak Gupta), J.

October 4, 2007.
(TILAK)

(V.K. Ahuja), J.

